1947. **File No.** Cotton Cloth Trade II/47

Legal **DEPARTMENT**

B **BRANCH**

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Subject:—

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Rules and Notifications under the Bombay Cotton cloth Trade Regulation Order, 1945-

43

File No. Cotton Cloth Trade II/47

Std. Sectt. Slip 24 B-c.

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H.R.D. 11-5-48 C.S.

A 1711

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Office of D.L.A.

The Bombay Cotton ~~Supply~~ Cotton Cloth Trade Regulation Order1 1945 provide for regulating the trade in cotton cloth and continues in force under section 17(2) of the Essential Supplies(Temporary Powers) Act,1946 (XXIV) of 1946), since cotton textile' are an essential commodity under section 2(a) (ii) of that Act. Under section 3 of the said Act the power to amend the said order therefore rests with the Central Government , unless it is delegated to the Provincial Government under section 4 ~~the Central Government~~ thereof. The Civil Supplies Department should therefore first approach the Central Government for such delegation and then refer the proposed amendment to the said order to this office for ~~result~~ scrutiny along with the notification of delegation.

Signed D.V. Vyas.

Remembrancer of Legal Affairs.

M.R.D.
11-5-46
C.5

U.R. to C.S.D. No. 176, dated 7th January 1947.

Action of the Rajah.

In place of the draft notification at page 29, a revised draft of the notification under section 3 of the Essential Supplies(Temporary Powers) Act, 1946, is sent herewith. The Civil ~~Supplies~~ Supplies Department also is verify that the proposed amendment of the Bombay Cotton Cloth Trade Regulation Order, 1945, is not repugnant to any order as made under sub-section (1) of section 3 by the Central Government, as stated ~~herein~~ in the Government of India Notification dated 20th December 1946 at page 33.

Sd/-
Secretary to Legal Affairs.

U.O. to C.S.D. , No. 3746 dated the 17th April 1947.

M.D. -
11-5-56
C.S

Civil Supplies Department.
Bombay Castle, 1947.

ORDER.

No.

Essential Supplies (Temporary Powers) Act, 1946.

No. :- In exercise of the powers conferred by section 3 of the Essential Supplies(Temporary Powers), Act, 1946(XXIV of 1946) read with the Government of India, Department of .....Notification No. 73 /1 - TA /46,dated the 29th December 1946, the Government of Bombay is pleased to amend the Bombay Cotton Cloth Trade Regulation Order, 1945, as follows, namely :-

*To be filled in By C.S.D.

To sub-clause(11) (a) of clause 6 of the said Order, the following shall be added, namely:-

"No change in the partnership shall be brought out except with the previous consent of the licensing authority who may, for reasons to be recorded in writing, refuse to grant the same."

By order of the Governor of Bombay,

Secretary to Government.

H.R.D.
11-5-56
C.S

Civil Supplies Department,
Bombay Castle April 1947.

Order.

Essential Supplies (Temporary Powers) Act, 1946.

No. 5K4/VII:- In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946, (XXIV of 1946), read with the Government of India, Department of Industries and Supplies, Notification No. 73/1-Cl-46, dated the 28th December 1946, the Government of Bombay is pleased to amend the Bombay Cotton Cloth Trade Regulation Order, 1945, as continued in force by sub-section (2) of section 17 of the said Act, as follows, namely:-

For sub-clause(h) of clause 2 of the said Order, the following sub-clause shall be substituted, namely :-

"(h)" licensing authority" means in the city of Bombay and the Bombay suburban District as constituted immediately before 1st day of October 1945 the Provincial Textile Controller, and elsewhere the District Magistrate."

By Order of the Governor of Bombay

Secretary to Government.

K.R.D.
11-5-56
O.S

Office of the R.L.A.

A revised draft order is sent herewith.

Sd/-
5-5-47.

Secretary of Legal Affairs.

U.O. to C.S.O. No. 4300 dated the 30th April 1947.

M.R.D.
11-5-56
C.S

Office of the R.L.A.]

The Civil Supplies Department proposal to authorise in the Surat District the District Distribution Superintendent and the Taluka Distribution Supervisors, for the purpose of clause 24 of the Bombay Cotton Cloth Trade Regulation Order, 1945, is intra vires the said clause 24, since the said Bombay Cotton Cloth Trade Regulation Order, 1945, although made under rule 81 of the Defence of India Rules, continues in force under section 17(2) of the ~~Emergency~~ Essential Supplies (Temporary Powers) Act, 1946. In place of the proposed draft order at page, 5, a revised draft thereof is sent herewith. The Civil Supplies Department may consider the question of issuing a consolidated draft order for the same purpose instead of separate orders issued from time to time.]

sd/- P.H.Lad
20/4/47.

Remembrancer of Legal Affairs.]

U. R. to C.S.D.No. 4327 dated the 20th ~~day~~ April 1947.

Madhav Ranchandra.
11/5.

~~2~~/5.]

Civil Supplies Department,

Bombay Castle, 1947.

Bombay Cotton Cloth Trade Regulation Order, 1945.

No. 564/VII.— In exercise of the powers conferred by clause 24 of the Bombay Cotton Cloth Trade Regulations Order, 1945 read with sub-section (2) of section 17 of the Essential Supplies (Temporary Powers) Act, 1946, (XXIV of 1946), the Government of Bombay is pleased further to authorise for the purposes of the said clause 24 in the Surat District the following officers, namely :-

1. The District Distribution Superintendent.
2. The Taluka Distribution Supervisors.

By order of the Governor of Bombay,

Secretary to Government.

Bombay Gazette,
11/5/56.

Office of the R.L.A.

The object is to eliminate the class of hawkers altogether under the Bombay Cotton Cloth Trade Regulation Order, 1945. The amendments in the said order for this purpose suggested by the Civil Supplies Department at P. 29 would not have the effect of prohibiting hawkers altogether. Clause 4 of the said Bombay Cotton Cloth Trade Regulation Order, 1945, says that for purposes of the Order there shall be so many classes of dealers. Under the Civil Supplies Department draft amendments Hawkers will not be left out altogether; they will not be included among "dealers". The result would be that the prohibition in clause 3 may not apply to them. That prohibition would have been effective, had not dealers been further specified in clause 4. I think the best way out is to amend clause 4 in the manner shown in the revised draft. In that case the definitions of the words "dealer" and "hawker" might be retained as they are and clause 4(a)(iii) (iii) might be amended so as to exclude "hawker" from "C class dealer". I have discussed this case with R.L. (L) and he agrees to the course suggested above.

2. A revised draft Order is sent herewith accordingly subject to the following remarks:-

(i) The amendments 3 and 4 at page 29 have been embodied in clause 1 of the revised draft Order.

(ii) Clause 13 of the Order also requires consequential amendments as shown in amendment 5 of the revised draft.

(iii) The words " or area as the case may be " occur in several places in Forms II, III, IV, V and VII. These words being inappropriate now have been deleted (vide amendment 10 of the revised draft).

3. The Civil Supplies Department should verify whether the revised draft carries out its intentions.

Sd/- T
26-5

Secretariat of Legal Affairs.

U.R. to C.S.D. No. 5407, dated the 26th May 1947.

R.D.-
5-5-47
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ORDER.

Essential Goods (Declaration) Act, 1946.

No. 964/ VII In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), read with the Government of India, Department of Industries & Supplies, Notification No. 73/1-TA/46 dated 20th December 1946 the Government of Bombay is pleased to amend the Bombay Cotton Cloth Trade Regulation Order, 1945, as follows namely :-

In the said Order-

1. for clause 4(a) the following clause shall be substituted, namely:-

4.(a) Licenses under this order shall be granted to the following five classes of dealers only, namely:-

(i) "A Class dealer" meaning a dealer who buys cloth from a manufacturer in mill-packed bales or cases and sells it or stores it for sale in such bales or cases; he shall obtain a license in Form XI.

(ii) "B Class dealer" meaning a dealer who buys cloth from a persons other than a manufacturer in packed bales and sells it or stores it for sale either in packed bales or split bales; he shall obtain a licen in Form XII.

(iii) "C Class dealer" meaning a dealer other than a hawker who does not retail business and sells or stores cloth for sale to persons other than licensees; he shall obtain a license in Form IV.

(iv) "D Class dealer" meaning one who carried on business in cloth as an agent; he shall obtain a license in form V.

(v) "E Class dealer" meaning a dealer not included in the- inclu in classes A to D; he shall obtain a license in form VII.

(b) A dealer may at one and the same time belong to one or more o the above five classes if the licensing authority so permits.

2. In sub-clause(a) of clause 9, the words and in the case of a hawker the area " shall be deleted.

3. In clause 10, the words" or area,as the case may be; at bo the places where they occur shall be deleted.

4. In clause 11, the letter, words and figures "D Class license..... 10" shall be deleted.

5. In clause 13 for the words and figures eight annas in the case of a license in Form VI and one rupee in other cases" the words

26-28

the words "one rupee"shall be substituted.

6. In clause 14, the letter, words and figure "E Class licence//..... 5" shall be deleted.

7. Sub-clause(2) of clause 18 shall be deleted.

8. In clause 19, the words " other than a hawker" shall be deleted.

9. For clause 25 the following shall be substituted:-

"Every licensee shall display his licence prominently at his pee place of business."

10 In condition 2 of a "important condition " in Forms II,III,IV,V, and VII the words " or area, as the case may be "wherever they occur, shall be deleted.

11 In conditions 4 and 7 of "Important Conditions" appended to Form II, the words "other than a hawker" shall be ~~deped~~ deleted.

12. In conditions 4 and 7 of "Important Conditions" appended to Form III the words "other than a hawker" shall be deleted.

13. In conditions 5 and 8 of "Important Conditions" appanded to Form IV, the words "other than a hawker" shall be deleted.

14. In conditions 4 and 7 of "important Conditions" appended to Form V, the words "other than a hawker " shall be deleted.

15 Form VI with the heading "Government of Bombay" shall be deleted.

16. In conditions 4 and 7 of "Important Conditions" appended to Form VII, the words "other than a hawker" shall be deleted.

By order of the Governor of Bombay,

Secretary to Government.

M.R.D.-
14-5-56
C.5

Office of the R.L.A.

The draft order at pages 91-93 has been further revised by additio
of a new clause(3) on the lines suggested by Under Secy., C.S.D.,
at a personal discussion with Asstt. Secy. of this Department.

Sd/-

for Remembrancer of Legal Affairs.

U.R.D.
14-5-48
C.5

U.R. to C.S.D., No. 9892 , dated the 3rd October 1947.

ORDER.

Essential Supplies (Temporary Powers) (Amendment) Order, 1947.

No. 564/VII.- In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), read with the Government of India, Department of Industries and Supplies, Notification No. 73/I-TP/46, dated the 28th December 1946, the Government of Bombay is pleased to amend the Bombay Cotton Cloth Trade Regulation Order, 1945, as follows, namely:-

In the said Order-

1. (1) for items (ii), (iii) and (v) of sub-clause (a) of clause 4 the following items shall respectively be substituted, namely:-

"(ii) "B Class Dealer" meaning a dealer who buys Indian millmade cloth on the authority of a licence issued by the licensing authority, from a manufacturer or a person other than a manufacturer in packed bales and sells it or stores it for sale either in packed bales or split bales. He shall not deal in handloom or powerloom cloth, or cloth imported from outside the Province or any other kind of cloth other than Indian millmade cloth except without a permit issued by the Licensing Authority; he shall however obtain a licence in Form III."

"(iii) "C class dealer" meaning a retail dealer other than a hawker-

(1) who sells or stores for sale Indian millmade cloth to persons other than licensees, and

L.S.D.-
4-3-46
C.5

(2) who is a "rationed cloth distributor" within the meaning of the Bombay Cloth Rationing Order,1945, or is a dealer directed by the licensing authority to sell or store for sale Indian mill-made cloth in accordance with the directions issued under the provisions of this Order; he shall obtain a license in Form IV."

"(v) "F" class dealer" meaning a dealer not included in classes 'A' to 'D' doing wholesale or retail business or both; he shall obtain a license in Form VII."

II. in clause 18, the brackets and figure "(1)" shall be deleted and and for the words "any such cloth to any person" the words "to any person any such cloth which is in stock and which such person is entitled to buy" shall be substituted;

III in Form I after entry 1, the following new entry shall be inserted namely:-

"1-A. In the case of Rationed cloth / Government Approved

Distributor- / cloth shop-

Number of the Rationed cloth distributor's / Government Approved Cloth shop."

IV. in Form III, for the words and brackets "(License to buy in original mill-packed bales and sell in mill-packed bales or split bales)" the following shall be substituted, namely:-

"(License to deal in original mill-packed or split bales of Indian Mill-made cloth under any scheme of controlled distribution in force for the time being)";

M.R.D.-
24-5-46
C.A

V. In Form IV,-

(a) for the words and brackets,

"(Licence to do business as a retailer),"

the following shall be substituted, namely:-

"(Licence to do business as a retailer in Indian millmade cloth under any scheme of controlled distribution in force for the time being)";

(b) after entry 1, the following new entry shall be inserted, namely:-

"1-A. Rationed Cloth Distributor No.

Government Approved Cloth Shop No."

(c) for the words" and shall not withhold from sale any such cloth to any person on demand and offer of the maximum retail price", the following shall be substituted, namely:-

"and shall not on demand and offer of the maximum retail price withold from sale to any person cloth which is in stock and which such person is entitled to buy";

VI. In Form VII for the words and figures "F class licence "under the Bombay Cotton Cloth Trade Regulation Order, 1945," the words and figures "F class licence" under the Bombay Cotton Cloth Trade Regulation Order, 1945, to deal in cloth other than cloth in which B and C class dealers are authorised to deal" shall be substituted.

H.R.D.
14-5-46
C.4

By order of the Governor of Bombay,

Secretary to Government.

A revised draft Order is sent herewith.

2. Draft clause I.- In this clause "B class Dealer" is defined as meaning a dealer, who buys Indian mill made cloth under the orders of Government, the Provincial Textitile Controller or the licensing authority. It is presumed that the intention is to refer to the license issued by the licensing authority on the authority of which the dealer buys the Indian mill made cloth. Reference has therefore been made only to the licensing authority which has been defined under the Bombay Cotton Cloth Trade Regulation Order, 1945, as meaning the Provincial Textile Controller in the City of Bombay and the Bombay Suburban District and elsewhere a District Magistrate. Under the order, there is no provision made for enabling Government to issue orders authorising a 'B Class Deal Dealer' to buy cloth. Reference to the orders of Government has therefore been omitted in the revised draft. Again in this clause, a 'C Class Dealer' has been defined as meaning inter alia a dealer authorised by the licensing authority to sell or to store for sale Indian Mill made cloth governed by any scheme of controlled distribution of cloth in accordance with the provisions of the Cotton Cloth and Yarn (Control) Order, 1945. It is not clear why reference has been made in this definition of 'C class Dealer' to the Cotton Cloth and Yarn (Control)Order. Clause 16 of the Bombay Cotton Cloth Trade Regulation Order, 1945, enables the licensing authority to give directions to dealers holding stocks of cloth to supply to the specified dealers or persons specified quantities of cloth at specified rates within a specific time. That clause also enable the licensing authority to issue such general or special directions to a dealer with regard to storage, sale and transport of cloth as it may deem fit. A 'C Class Dealer' will presumably be governed by the directions issued under this clause. The appropriate Order to refer to in the definition of 'C Class Dealer' would therefore appear to be the Bombay Cotton Cloth Trade Regulation Order, 1945. Reference has therefore been made to the said Order in the revised draft.

3. Clause II.- This clause inserts a new clause 11A requiring B or C class Dealers to deposit certain amounts in cash or any security to Government which will be liable to forfeiture in certain events. In effect the clause prescribes a penalty which is not warranted by the Essential Supplies (Temporary Powers) Act, 1946, and would consequently be

P.T.O.

and would consequently be ultra vires of the Act. This clause has therefore been omitted from the revised draft. The object in view can however, be achieved by making the dealers to execute a bond and pay in the requisite deposit. If an amount is deposited by the dealers and a bond executed by them agreeing to the the forfeiture of the amount for breach of any of the stipulations of the bond the forfeiture of the deposit, if reasonable in amount, would be treated as valid according to the decision in I.L.R. 29 Madras 114. (see R.L.A.'s Opinion No. 4940 dated the 13th July 1944). The failure to execute the bond and pay in the deposit can be met by refusal to ~~issue~~ issue or renew licences to the dealers.

Clauses III, IV and V.- The amendments proposed in these clauses are not necessary.

C.S.D. should verify whether the revised draft carries out its intentions.

Sd/-
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Remembrancer of Legal Affairs.

U.O. to C.S.D. No. 8393
dated the 1st September 1947.

H.R.D.
14-5-56
C.A

Office of the R.L.A.

There is no objection to the amendments proposed in item (ii) in clause 4(a) of the Bombay Cotton Cloth Trade Regulation Order, 1945.

2. Para. 2 of R.C.S.' note.- For the words and figures "he shall obtain a license in Form XV" in the definition of C class dealer the following may be substituted, namely:-

> "he shall not deal in handloom or powerloom cloth, or cloth imported from outside the Province or any other kind of cloth other than Indian mill-made cloth except without a permit issued by the Licensing Authority; he shall obtain a license in Form IV.

3. Para. 3 of R.C.S.' note.- Item (v) may be recast as follows:-

> "(v) "C class dealer" meaning a dealer not included in classes 'A' to 'B' doing wholesale or retail business or both;he shall deal in cloth other than mill-made cloth; he shall obtain a licence in Form Form VII."

Similar amendment may be made in Form VII as shown in pencil on page 69.

4. Para. 4 of R.C.S.' note.- As regards the question of taking deposit from licencees, as pointed out by the R.L.A. a clause as originally proposed by the Civil Supplies Deptt. would be ultra vires of the Essential Supplies(Temporary Powers) Act, 1946. It is, however, understood that such bonds are necessary more for the purpose of a show of coercive pressure than for taking any action upon them. If that be the intention they may, as already advised, be taken on an informal basis.

Sd/-
S.D.

Remembrancer of Legal Affairs.

H.R.D.
14-9-56
C.A.

U.O. to C.S.D., No. 9079, dated the 10th September 1947.

Civil Supplies Department,

Bombay Castle, July 1947.

ORDER.

No. .- In exercise of the powers conferred by clause 22 of the Bombay Cotton Cloth Trade Regulation Order, 1945, the Government of Bombay is pleased to cancel with effect from ..... all B class licences granted to handlers under the said.

By order of the Governor of Bombay,

Joint Secretary to Government.

M.R.D.
14-5-46
C.4

Office of the R.L.A.

The question referred to the R.L.A. for consideration is whether in view of the amendments proposed to be made in the Bombay Cotton Cloth Trade Regulation Order, 1945, at page 33-35 ante the E class licenses granted to the bankers under the said Order automatically lapse or whether it is necessary to cancel them specifically under the said Order.

2. The Bombay Cotton Cloth Trade Regulation Order, 1945, and the licenses granted thereunder are saved by sub-section (2) of section 17 of the Essential Supplies (Temporary Powers) Act, 1946. 'E' class licenses are granted to bankers under clause 6 of the Order. Under clause 14 licenses granted under the order are valid for the periods specified therein. In view of these provisions the persons to whom 'E' class licenses are granted will have a right to carry on their business till the expiry of the period for for which the same are granted to them and the mere fact that such class of licenses are proposed to be eliminated under the proposed amendments to the Order will not affect their right to continue to carry on their bankers business till the expiry of the said period. For the purpose of cancelling the 'E' class licenses, it would be, therefore, necessary to resort to clause 22 of the Order. Under that clause the Provincial Government has been given power to cancel or suspend any licenses or class of licenses without previous notice or assignment of any reasons. Since under this clause power has been given to the Provincial Government to cancel even "class of licenses" it would be open to the Government to cancel ~~the~~ ~~class~~ ~~of~~ ~~licenses~~ all 'E' class licenses. Although no reasons need be assigned or communicated to the licensees for cancellation of their licenses, it ~~which~~ would would be advisable, as pointed out by the R.L.A. in his opinion No. 30-confdl. dated the 23rd January 1945, to keep a record of the reasons for such cancellation.

3. A revised draft ~~Order~~ Order which it is necessary to issue in this case for the cancellation of all 'E' class licenses is sent herewith. As there is no power taken by Government under the Order for requiring license ees in such cases to surrender their licenses to a specified authority the provision to that effect in the C.S.D. draft order at page 27 is omitted in the revised draft. It would be advisable to serve the proposed order on each individual banker to whom an 'E' class license has been granted.

Sd/-

Secretary of Legal Affairs.

R.S.. N. to C.S.D. No.6963 dated the 6th July 1947.